

### **Remarks/Arguments**

Applicants have received and carefully reviewed the Office Action of the Examiner mailed February 26, 2009. Currently, claims 5-31, 52, 54-72, and 74-95 remain pending of which claims 5-31 were previously withdrawn. Claims 52, 54-72, and 74-95 have been rejected. Although Applicants strongly disagree with the Examiner's characterization of the Wholey reference as disclosing a segmented filter, claims 52 and 72 have been amended to further clarify the geometry of the filter of those claims. Favorable consideration of the following remarks is respectfully requested.

### **Claim Rejections – 35 USC § 102**

Claims 52, 54, 55, 57-63, 70-72, 74, 75, 77-83, and 90-95 were rejected under 35 U.S.C. 102(e) as anticipated by Wholey et al. (U.S. Patent No. 6,652,554), hereinafter Wholey. After careful review, Applicant must respectfully traverse this rejection.

*"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."*

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (See MPEP § 2131). Nowhere does Wholey appear to disclose a filter membrane or filtering region:

“ further comprising a first generally linearly tapered portion and a second generally linearly tapered portion” as recited in claims 52 and 72.

Instead, Wholey appears to teach a filter in which the filter material “forms a cup-shaped trap” (col. 3, line 2). The Examiner has provided a modified Figure 1 of Wholey to which has been added three line segments with two line segments designated “First Angle” and “Second Angle” respectively. Applicants are confident that the Examiner is aware that a straight line segment is not an angle nor does a straight line segment define an angle. For the purposes of this response, it will be assumed that the Examiner intended to designate the included apical angles which would be formed if the added line segments were rotated about the unidentified third line. As an initial matter, it is noted that the line segments, the presumed included angles, and any segments of the filter of Wholey to which they might correspond are not disclosed elements of Wholey and so do

not form an appropriate basis for a §102(e) rejection. Wholey appears to disclose only a single cup-shaped filter segment formed as a surface of revolution by a smooth convex-outward curve.

Applicants are also confident that the Examiner is aware that the two line segments designated “First Angle” and “Second Angle” do not extend along the filter as would be required to form first and second generally linearly tapered portions which extend at their respective angles for a substantial length as would be required to form a conical or frustoconical portion. To the extent that the arbitrarily selected lines intersect with the cup-shaped filter and may be said to designate portions of the filter of Wholey, said portions not having been disclosed by Wholey, they would appear to be either tangent to the cup-shaped filter at a single point as perhaps intended for the “Second Angle” line segment or cutting through the cup shape at a single point, thereby designating a portion of the filter having no axial thickness, thereby approximating a circle. In an alternative, a line segment might cut across the cup-shaped filter thereby contacting the curve shown in cross-section at two points thereby designating either a convex, or possibly concave, surface of revolution, but not the asserted cone or conical frusta.

For at least these reasons, Wholey does not appear to disclose *each and every element as set forth in the claim* in as great detail as found in independent claims 52 and 72 and Applicant respectfully requests that the rejection of claims 52 and 72 be withdrawn.

Additionally, for similar reasons as well as others, claims 54, 55, 57-63, 70-71, 74, 75, 77-83, and 90-95, which depend from claims 52 and 72, and include significant additional limitations thereto, are believed to be not anticipated by Wholey and Applicants respectfully request that the rejections be withdrawn

### **Claim Rejections – 35 USC § 103**

Claims 56 and 76 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wholey, as applied to claims 52 and 72, in view of Daniel et al. (U.S. Patent No. 5,814,064), hereinafter Daniel. After careful review, Applicant must respectfully traverse this rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP § 2143.03). As discussed previously, nowhere does Wholey appear to disclose a filter membrane or filtering region “further comprising a first generally linearly tapered portion and a second generally linearly tapered portion” as recited in claims 52 and 72. Additionally, nowhere does Daniel, advanced to teach a polyurethane filter membrane, appear to remedy the shortcomings of Wholey. Therefore, Wholey in view of Daniel does not appear to teach all the claim limitations, as is required to establish a *prima facie* case of obviousness as applied to independent claims 52 and 72.

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP 2143.03)

Accordingly, it is believed that claims 56 and 76, which depend from nonobvious independent claims 52 and 72 respectively, are also nonobvious and Applicants respectfully request that the rejections be withdrawn.

Claims 64-69 and 84-89 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wholey, as applied to claims 52 and 72, in view of Mazzocchi et al. (U.S. Patent No. 6,605,1024), hereinafter Mazzocchi. After careful review, Applicant must respectfully traverse this rejection.

Nowhere does Mazzocchi, advanced to teach a filter assembly comprising a retrieval sheath, appear to remedy the shortcomings of Wholey. Therefore, Wholey in view of Mazzocchi does not appear to teach all the claim limitations, as is required to establish a *prima facie* case of obviousness as applied to independent claims 52 and 72.

Accordingly, it is believed that claims 64-69 and 84-89, which depend from nonobvious independent claims 52 and 72 respectively, are also nonobvious and Applicants respectfully request that the rejections be withdrawn.

In the Response to Arguments, the Examiner has characterized “substantial length” as a relative term which “can encompass any length”. Applicants respectfully disagree. The ordinary meaning of “substantially” as found for example in the Merriam-

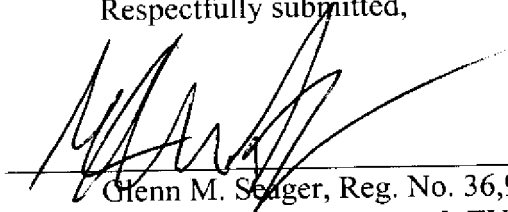
Webster's Online Dictionary, 11th Edition is "being largely but not wholly that which is specified". Accordingly, "substantially" may not reasonably be interpreted as a single point along the extended curved membrane of Wholey, but must encompass the curve, and so the filter, largely but not wholly. More particularly, the Examiner must be aware that a point, being dimensionless, has no length and thus cannot disclose or otherwise anticipate a length, much less a substantial length, along the extended curved membrane. Further, as currently amended, claims 52 and 72 now recite that the first and second tapered portions are both generally linearly tapered as opposed to the single curved portion disclosed by Wholey.

In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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Glenn M. Seager, Reg. No. 36,926  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, Minnesota 55403-2420  
[Glenn.Seager@cstlaw.com](mailto:Glenn.Seager@cstlaw.com)  
Tel: (612) 677-9050  
Fax: (612) 359-9349